

Before the Board of Zoning Adjustment, D. C.

Application No. 11793, of Norman Bernstein, et al., pursuant to Sections 8207.1 and 8207.2 of the Zoning Regulations, for a variance to permit an office use in the R-5-C Zone, as provided by Section 8207.11 of the regulations, or in the alternative, a special exception to permit the extension and change of a non-conforming use on 1st floor as provided by Sections 7104.2, 7109, and 7105 of the regulations, at the premises 1701 16th Street, N. W., Lot 815, Square 192.

HEARING DATE: July 16, 1975

DECISION DATE: August 6, 1975

FINDINGS OF FACT:

1. Applicant proposes to establish an office use in the R-5-C Zone by means of a use variance pursuant to Section 8207.1 of the regulations or in the alternative by means of a special exception permitting the extension of a non-conforming use (restaurant - caterer) and a simultaneous change of said non-conforming use to an office use pursuant to Sections 7104.2 and 7105 of the regulations.

2. The Board at public hearing, denied without prejudice as to other relief, the portion of the application requesting a special exception to permit the simultaneous extension and change of non-conforming use. The Board would violate the intent of the Zoning Regulations which it administers if it extended the non-conforming use knowing it was never to be established but instead changed to another non-conforming use immediately.

3. The proposed office use is to be located on the first (1st) floor of the subject property known as the Chastleton Hotel, a structure built as an apartment-hotel in 1920 and later converted to solely an apartment use.

4. The first (1st) floor of the Chastleton consists of both residential apartment uses and commercial adjunct uses (ex. drugstore, valet shop, beauty salon and restaurant - caterer).

5. The proposed office use is already established on the subject premises but the occupant was unaware that a certificate

of occupancy was required or that the use was not permitted as a matter of right. This application was filed when the occupant learned of the requirement.

6. Applicant has testified that the office use is not visible from the exterior of the building and neither exterior nor interior signs indicate its existence. The office serves as the central monitoring station for a security system which utilizes telephone lines to transmit signals from the clients' property to the equipment in the office. No noise or other objectionable conditions are generated by the equipment.

7. The subject office is open twenty-four (24) hours a day and employs a total of six (6) persons with two (2) employees working each of the three (3) shifts. There are three (3) parking spaces allotted for use by the office in the parking lot of the Chastleton.

8. An officer of the applicant's corporation testified that the subject area of this application has been used as office space since 1949. His testimony was based upon information he secured from the company records allegedly indicated that a women's group, Hadassah, occupied the premises from 1949 to 1968. The applicant then rented the premises to a predecessor of the present occupant for office use. Applicant is unaware of the existence of any Certificate of Occupancy to show these uses were legally established.

9. The present occupant testified that if it is forced to vacate the premises there is an extensive amount of wiring, conduits and raceways which must be removed and several thousand telephone lines to relocate as input facilities. Applicant estimates an approximate cost of \$7,500.00 to convert the office to an apartment use.

10. There are other occupied residential apartments on the first (1st) floor of the Chastleton and there is no evidence that the subject area cannot be used for residential purposes. Applicant has testified only that there are other vacant apartments available for prospective tenants in the building because there is a frequent turnover and a high vacancy factor.

11. There was strong opposition to the application

in letter form and by testimony at public hearing from property owners in the immediate neighborhood, citizens associations and from a D. C. Council member. The basis of the opposition was consistent and was directed to the following principal objections:

- a. This would constitute an incursion of commercial uses into a solidly residential area which through its own efforts is trying to redevelop.
- b. There would result an overall adverse affect by the commercial use on the character, integrity and future development of the neighborhood.
- c. There is a current shortage of housing in the district and the number of residents at the Chastleton indicates it is a desirable place to live. Applicant has shown no need to justify utilizing a residential unit for a commercial use when there is a commercially zoned strip located one (1) block from the subject property.
- d. The office use is not related to the legally established commercial adjuncts on the premises and applicant has demonstrated no hardship to warrant a variance for a commercial use in the residential district.

CONCLUSIONS OF LAW:

Based upon the above Findings of Fact and the evidence of record the Board concludes that the applicant is suffering no exceptional or undue hardship in this case. The applicant has shown no evidence to demonstrate that the subject premises cannot be used for residential purposes as are some of the other units on the first (1st) floor of the Chastleton Hotel. Section 8207.11 of the Zoning Regulations addresses itself to hardship suffered by the owner of property not the tenant. Other than having to make a financial expenditure to renovate the premises for residential use the applicant has stated alleged hardship relating only to the tenant. While an office use may have existed on the premises for more than twenty-five (25) years there is no evidence showing these uses were ever legally established. The preponderance of evidence does not indicate there

will be no substantial detriment to the public good and the variance would impair the intent of the Zoning Regulations. This area is zoned residential and applicant has demonstrated no hardship preventing the use of the premises in compliance with the permitted uses in that district.

ORDER: It is hereby ordered that the above application be DENIED.

VOTE: 4-0 (Lilla Burt Cummings, Esq., not voting, after not having heard the case.)

BY ORDER OF THE D. C. BOARD OF ZONING ADJUSTMENT

ATTESTED By: James E. Miller
JAMES E. MILLER
Secretary to the Board

FINAL DATE OF ORDER: 8/26/75

Before the Board of Zoning Adjustment, D. C.

Application No. 11793, of Norman Bernstein, et al., pursuant to Sections 8207.1 and 8207.2 of the Zoning Regulations, for a variance to permit an office use in the R-5-C Zone, as provided by Section 8207.11 of the regulations, or in the alternative, a special exception to permit the extension and change of a non-conforming use on 1st floor as provided by Sections 7104.2, 7109 and 7105 of the regulations, at the premises 1701 - 16th Street, N. W., Lot 815, Square 192.

HEARING DATE: July 16, 1975


DECISION DATE: August 6, 1975

DISPOSITION: Denied by a vote of 4-0 (Lilla Burt Cummings, Esq., not present).

FINAL DATE OF ORDER: August 26, 1975

Upon consideration of the Motion for Reconsideration, Reargument or Rehearing filed by the applicant, dated September 8, 1975, the Board finds that the motion fails to state a valid basis of error on the part of the Board to support a Motion for Reconsideration, to identify new evidence which is the basis of a Motion for Rehearing and to raise substantial questions of fact which would warrant rehearing of this matter. Accordingly, it is hereby ORDERED that the applicant's Motion for Reconsideration, Reargument and Rehearing is hereby DENIED by a vote of 3-0 (Chairman Scrivener, Dr. Lewis and Mr. Harps to deny, Mr. McIntosh and Lilla Burt Cummings, Esq., not voting).

BY ORDER OF THE D. C. BOARD OF ZONING ADJUSTMENT

ATTESTED By: 

STEVEN E. SHER
Acting Secretary to the Board

FINAL DATE OF ORDER: FEB 10 1976